

Subtitle E

Part 6

Enforcement

1451. Civil actions

(a) Persons entitled to maintain actions

(1) A plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan, or an employee organization which represents such a plan participant or beneficiary for purposes of collective bargaining, may bring an action for appropriate legal or equitable relief, or both.

(2) Notwithstanding paragraph (1), this section does not authorize an action against the Secretary of the Treasury, the Secretary of Labor, or the corporation.

(b) Failure of employer to make withdrawal liability payment within prescribed time

In any action under this section to compel an employer to pay withdrawal liability, any failure of the employer to make any withdrawal liability payment within the time prescribed shall be treated in the same manner as a delinquent contribution (within the meaning of section 1145 of this title).

(c) Jurisdiction of Federal and State courts

The district courts of the United States shall have exclusive jurisdiction of an action under this section without regard to the amount in controversy, except that State courts of competent jurisdiction shall have concurrent jurisdiction over an action brought by a plan fiduciary to collect withdrawal liability.

(d) Venue and service of process

An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(e) Costs and expenses

In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

(f) Time limitations

An action under this section may not be brought after the later of—

(1) 6 years after the date on which the cause of action arose, or

(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.

(g) Service of complaint on corporation; intervention by corporation

A copy of the complaint in any action under this section or section 1401 of this title shall be served upon the corporation by certified mail. The corporation may intervene in any such action.

1452. Penalty for failure to provide notice

Any person who fails, without reasonable cause, to provide a notice required under this subtitle or any implementing regulations shall be liable to the corporation in an amount up to \$100 for each day for which such failure continues. The corporation may bring a civil action against any such person in the United States District Court for the District of Columbia or in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

1453. Election of plan status

(a) Authority, time, and criteria

Within one year after September 26, 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation, that the plan shall not be treated as a multiemployer plan for any purpose under this chapter or the Internal Revenue Code of 1954, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

- (1) the plan was not a multiemployer plan because the plan was not a plan described in section 1002 (37)(A)(iii) of this title and section 414 (f)(1)(C) of title 26 (as such provisions were in effect on the day before September 26, 1980); and

- (2) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.

(b) Requirements

An election described in subsection (a) of this section shall be effective only if—

- (1) the plan is amended to provide that it shall not be treated as a multiemployer plan for all purposes under this chapter and the Internal Revenue Code of 1954, and

- (2) written notice of the amendment is provided to the corporation within 60 days after the amendment is adopted.

(c) Effective date

An election described in subsection (a) of this section shall be treated as being effective as of September 26, 1980.